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14 Substances Control, et al.

15 UNITED STATES BANKRUPTCY COURT
16 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

17 In re:
18 PG&E CORPORATION
19 - and -
20 PACIFIC GAS AND ELECTRIC
COMPANY,
21 Debtors.

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

22 ☐ Affects PG&E Corporation
23 ☐ Affects Pacific Gas and
Electric Company
24 ☒ Affects both Debtors

Date: April 10, 2019
Time: 1:30 p.m.
Place: 450 Golden Gate Avenue
16th Floor
San Francisco, CA 94102
Judge: Honorable Dennis Montali

25 **STATEMENT OF THE CALIFORNIA STATE AGENCIES ON MOTION FOR ORDER**
26 **AUTHORIZING DEBTORS TO (A) SELL, TRANSFER, LEASE OR OTHERWISE**
27 **ENCUMBER REAL PROPERTY, (B) ENTER INTO ACQUISITION, LEASE, LICENSE, AND**
28 **PERMIT AGREEMENTS RELATING TO THIRD-PARTY PROPERTY, AND (C) PURSUE**
AND BRING EMINENT DOMAIN PROCEEDINGS TO JUDGMENT OR ENTER INTO
SETTLEMENTS IN LIEU THEREOF, SUBJECT TO CERTAIN PROCEDURES AND
PARAMETERS, AND GRANTING RELATED RELIEF [DOCKET NO. 1004]

1 The California Department of Toxic Substances Control, California Department of Water
2 Resources, State Water Resources Control Board, Regional Water Quality Control Boards, State
3 Energy Resources Conservation and Development Commission, and California Department of
4 Fish and Wildlife (collectively, the “California State Agencies”) hereby file this statement and
5 reservation of rights with respect to the Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 362,
6 and 363 and Fed. R. Bankr. P. 2002, 4001 and 6004 for an Order (I) Authorizing Debtors to (a)
7 Sell, Transfer, Lease or Otherwise Encumber Real Property, (b) Enter Into Acquisition, Lease,
8 License, and Permit Agreements Relating to Third-Party Property, and (c) Pursue and Bring
9 Eminent Domain Proceedings to Judgment or Enter into Settlements in Lieu Thereof, Subject to
10 Certain Procedures and Parameters, and (II) Granting Related Relief (Docket No. 1004) (the
11 “Motion”) based on the following:

12 1. The California State Agencies do not oppose the Motion to the extent it seeks this
13 Court’s authority for the Debtors to enter into transactions involving real property in the ordinary
14 course of business, and subject to the parameters in the Motion, outside the ordinary course of
15 business. In fact, many state agencies of the State of California, including the California State
16 Agencies, regularly interact with the Debtors in the ordinary course of the Debtors’ business in
17 this regard.

18 2. Counsel has met and conferred with Counsel for the Debtors regarding the
19 California State Agencies’ objections to the Debtor’s Motion and form of Order. The parties
20 stipulated to a one-day extension for any response to the Motion, while the Debtors provided a
21 revised proposed Order on the Motion addressing the California State Agencies’ objections. The
22 parties will continue to discuss any unresolved issues. Pending inclusion of the agreed upon
23 language in the final Order, the California State Agencies submit this statement to preserve their
24 objections, as identified below.

25 3. The California State Agencies would object to the Motion to the extent the relief
26 the Debtors request in any way operates to circumvent the application of non-bankruptcy
27 requirements for regulatory approvals that would otherwise apply to any transactions addressed in
28

1 the Motion.¹ In discussions with the Debtors' Counsel, the California State Agencies are
2 informed and believe that the Debtors are willing to put the following language in the Order,
3 which would resolve any objection on this point:

4 "Nothing in this Order releases or excuses the Debtors from obtaining all non-
5 bankruptcy law approvals for any real property transaction, or releases or excuses
6 the Debtors from compliance with all applicable state and local laws, regulations,
ordinances or with any injunctions, administrative orders, or agreements entered
pursuant to such non-bankruptcy laws."

7 4. The Order also should be clear about its effect on environmental issues relating to
8 the Debtors' real property. When discussing surplus property sales, the Motion mentions the sale
9 of vacant lands on which PG&E facilities have been decommissioned. *See* Motion at page 8.
10 Typically, such properties have environmental issues. The Order should be clear that any sale or
11 other disposition of property does not relieve the Debtors or a subsequent owner of liabilities and
12 responsibilities under non-bankruptcy law, which also is consistent with the Court's guidelines on
13 sale motions. In discussions with the Debtors' Counsel, the California State Agencies are
14 informed and believe that the Debtors are willing to put the following language in the Order,
15 which would resolve any objection on this point:

16 "Nothing in this Order: (a) releases, nullifies, precludes or enjoins the
17 enforcement of any liability (including for penalties, damages, cost recovery or
18 injunctive relief) to a governmental unit under police and regulatory statutes or
19 regulations (including but not limited to environmental laws or regulations) that
20 any entity would be subject to as the owner or operator of property that is sold or
transferred pursuant to this Order or (b) authorizes the transfer to the purchaser of
any governmental licenses, permits, registrations, authorizations or approvals
without compliance with all applicable legal requirements under the law
governing such transfers."

21 5. The California State Agencies object to the Motion to the extent it would authorize
22 the sale of contaminated property outside the ordinary course of business without prior approval
23 of California state agencies with jurisdiction over the property. Any sale without such
24 authorization should proceed by noticed motion pursuant to section 363(b). Counsel discussed

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26 ¹ Title 28, U.S.C. § 959(b) provides, in pertinent part, that, "a trustee, receiver or manager
27 appointed in any cause pending in any court of the United States, including a debtor in
28 possession, shall manage and operate the property in his possession as such trustee, receiver or
manager according to the requirements of the valid laws of the State in which such property is
situated, in the same manner that the owner or possessor thereof would be bound to do if in
possession thereof." 28 U.S.C. §959(b).

1 this issue and it is not resolved. The California State Agencies suggest the following language in
2 the Order to address this objection:

3 “This Order does not authorize any sale of contaminated Real Property Interests
4 other than in the ordinary course of business. This Order does not preclude
5 Debtors from filing a motion pursuant to section 363(b) seeking authorization to
6 sell any contaminated Real Property Interests.”

6 6. The Motion at page 14 represents that the Debtors do not seek to circumscribe or
7 affect any specific protections afforded any lienholder, co-interest owner, or similarly situated
8 party that may be applicable under section 363 with respect to any specific property the Debtors
9 might seek to sell or transfer. The Debtors represent that they will seek Court approval of any
10 sale free and clear of liens under section 363(f). Moreover, it should be clear that to the extent the
11 Debtors seek to assume and assign leases or executory contracts without the consent of the
12 affected non-debtor parties as provided in such leases or contracts, the Debtors must seek such
13 relief by properly noticed motion under section 365.² While the California State Agencies agree
14 that the relief granted by the Motion should be limited as described, the Order must contain
15 appropriate language to that effect. The Debtors’ proposed Order filed with the Motion does not
16 contain any such language. In discussions with the Debtors’ Counsel, the California State
17 Agencies have been provided language in the Order to address this issue, which would resolve
18 any objection on this point if in the final Order.

19 7. The California State Agencies also request the right to be heard on any motion that
20 is filed by the Debtors pursuant to the procedures set forth in the Motion when the Committees
21 object to a transaction. While the Motion does not mention the rights of parties in interest other
22 than the Committees to be heard on a motion in such circumstances, the California State Agencies
23 submit that the Order should be clear that any party in interest may be heard at such hearing,
24 including for the purpose of requesting more time than the ten (10) calendar days’ notice,
25 adequate protection or such other relief as may be appropriate. In discussions with Counsel for
26 the Debtors, the California State Agencies have been provided language in the Order clarifying

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28 ² The California State Agencies reserve all rights with respect to any attempt to use section 365
of the Bankruptcy Code to assume and assign regulatory permits, agreements, and/or licenses.

1 that the California State Agencies may be heard on any motion filed under the procedures in the
2 Motion, which would resolve this issue if in the final Order.

3 8. The California State Agencies note that the Motion says that the Debtors served
4 “the Office of the California Attorney General” among others. *See* Motion at page 23, lines 2-5.
5 While counsel for the California State Agencies appreciate the Debtors’ efforts toward thorough
6 service, it is unclear in what capacity or for what purpose service on “the Office of the California
7 Attorney General” was made. Counsel discussed the issue with Debtors’ counsel and made clear
8 that any notice to a particular agency of the State of California should be served on that specific
9 agency in accordance with applicable law, and service on “the Office of the California Attorney
10 General” is not sufficient.³

11 9. Further, the California State Agencies reserve all rights to assert their objections in
12 the event agreed upon language for the Order is not approved by the Court, and as to any
13 particular real property transaction that is the subject of the Motion as to the applicability of any
14 particular provision of non-bankruptcy law or regulation or agreement, the Debtors’ compliance
15 therewith, and with respect to the proper notifications that the Debtors must give any particular
16 agency of the State of California for regulatory approvals of such transactions.

17 10. Neither this statement nor any subsequent appearance, pleading, proof of claim,
18 claim or suit is intended or shall be deemed or construed as:

19 a. consent by the California State Agencies to the jurisdiction of this Court or
20 any other court with respect to proceedings, if any, commenced in any case against or otherwise
21 involving the California State Agencies;

22 b. waiver of any right of the California State Agencies to (i) have an Article
23 III judge adjudicate in the first instance any case, proceeding, matter or controversy as to which a
24 Bankruptcy Judge may not enter a final order or judgment consistent with Article III of the
25 United States Constitution, (ii) have final orders in non-core matters entered only after *de novo*

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27 ³ The California State Agencies filed a Request for Special Notice at Docket No. 655. However,
28 that request was for notice to certain specified agencies of the State of California that have
retained the Office of the Attorney General and other counsel to represent them in this bankruptcy
case only.

1 review by a District Court Judge, (iii) trial by jury in any proceeding so triable in the Chapter 11
2 Cases or in any case, controversy, or proceeding related to the Chapter 11 Cases, (iv) have the
3 United States District Court withdraw the reference in any matter subject to mandatory or
4 discretionary withdrawal, (v) any and all rights, claims, actions, defenses, setoffs, recoupments or
5 remedies to which the California State Agencies are or may be entitled under agreements, in law
6 or in equity, all of which rights, claims, actions, defenses, setoffs and recoupments are expressly
7 reserved hereby, (vi) the requirements for service of process under Federal Rules of Bankruptcy
8 Procedure 7004 and 9014, or (vii) the requirements for service of an objection to claim under
9 Federal Rule of Bankruptcy Procedure 3007, all of which rights, claims, actions, defenses, setoffs,
10 and recoupments the California State Agencies expressly reserve; or

11 c. waiver of any objections or defenses that the State of California, the
12 California State Agencies or any other agency, unit or entity of the State of California may have
13 to this Court's jurisdiction over the State of California, the California State Agencies or such
14 other agency, unit or entity based upon the Eleventh Amendment to the United States
15 Constitution or related principles of sovereign immunity or otherwise, all of which objections and
16 defenses are hereby reserved.

17 Dated: April 4, 2019

Respectfully submitted,

18 XAVIER BECERRA
19 Attorney General of California
20 MARGARITA PADILLA
Supervising Deputy Attorney General

21 By: /s/ Paul J. Pascuzzi
22 STEVEN H. FELDERSTEIN
23 PAUL J. PASCUZZI
24 FELDERSTEIN FITZGERALD
25 WILLOUGHBY & PASCUZZI LLP
26 Attorneys for California Department of Toxic
27 Substances Control, California Department of Water
28 Resources, State Water Resources Control Board,
Regional Water Quality Control Boards, State
Energy Resources Conservation and Development
Commission, and California Department of Fish and
Wildlife

1 **PROOF OF SERVICE**

2 I, Karen L. Widder, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a
4 party to the within action; my business address is 400 Capitol Mall, Suite 1750, Sacramento, CA
5 95814. On April 4, 2019, I served the within document(s):

6 **STATEMENT OF CALIFORNIA STATE AGENCIES TO MOTION FOR ORDER**
7 **AUTHORIZING DEBTORS TO (A) SELL, TRANSFER, LEASE OR OTHERWISE**
8 **ENCUMBER REAL PROPERTY, (B) ENTER INTO ACQUISITION, LEASE,**
9 **LICENSE, AND PERMIT AGREEMENTS RELATING TO THIRD-PARTY**
10 **PROPERTY, AND (C) PURSUE AND BRING EMINENT DOMAIN**
11 **PROCEEDINGS TO JUDGMENT OR ENTER INTO SETTLEMENTS IN LIEU**
12 **THEREOF, SUBJECT TO CERTAIN PROCEDURES AND PARAMETERS, AND**
13 **GRANTING RELATED RELIEF [DOCKET NO. 1004]**

14 by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid,
15 in the United States mail at Sacramento, California, addressed as set forth below:

16 **Debtors**

17 PG&E Corporation and
18 Pacific Gas and Electric Company
19 Attn: Janet Loduca, Esq.
20 PO Box 770000
21 77 Beale Street,
22 San Francisco, CA 94105

23 **Proposed Counsel to Debtors**

24 Weil, Gotshal & Manges LLP
25 Attn: Stephen Karotkin, Esq.,
26 Jessica Liou, Esq. and Matthew Goren, Esq.
27 767 Fifth Avenue
28 New York, New York 10153

Keller & Benvenuti LLP
Attn: Tobias Keller, Esq. and Jane Kim, Esq.
650 California Street, Suite 1900
San Francisco, CA 94108

Counsel for Administrative Agent under Debtor-in-Possession Financing Facility

Stroock & Stroock & Lavan LLP
Attn: Kristopher M. Hansen, Esq.,
Erez E. Gilad, Esq. & Matthew G. Garofalo, Esq.
180 Maiden Lane
New York, NY 10038-4982

1 Stroock & Stroock & Lavan LLP
2 Attn: Frank A. Merola, Esq
3 2029 Century Park East
4 Los Angeles, CA 90067-3086

5 Counsel for Collateral Agent under Debtor-in-Possession Financing Facility

6 Davis Polk & Wardwell LLP
7 Attn: Eli J. Vonnegut, Esq., David Schiff, Esq.,
8 and Timothy Graulich, Esq.
9 450 Lexington Avenue
10 New York, NY 10017

11 Counsel to California Public Utilities Commission

12 Paul, Weiss, Rifkind, Wharton & Garrison LLP
13 Attn: Alan W. Kornberg, Esq., Brian S. Hermann, Esq.,
14 Walter R. Rieman, Esq., Sean A. Mitchell, Esq.,
15 and Neal P. Donnelly, Esq.
16 1285 Avenue of the Americas
17 New York, NY 10019-6064

18 Office of the United States Trustee

19 Office of the United States Trustee
20 Attn: James L. Snyder, Esq. and Timothy Laffredi, Esq.
21 450 Golden Gate Avenue, Suite #05-0153
22 San Francisco, CA 94102

23 U.S. Nuclear Regulatory Commission

24 U.S. Nuclear Regulatory Commission
25 Attn: General Counsel
26 Washington, DC 20555-0001

27 Counsel for United States on behalf of the Federal Energy Regulatory Commission

28 U.S. Department of Justice
Attn: Danielle A. Pham, Esq.
1100 L Street, NW, Room 7106
Washington DC 20005

Proposed Counsel for the Official Committee of Unsecured Creditors

Milbank LLP
Attn: Dennis F. Dunne, Esq. and
Sam A. Khalil, Esq.
55 Hudson Yards
New York, NY 10001-2163

Milbank LLP
Attn: Paul S. Aronzon, Esq., Gregory A. Bray, Esq.,
and Thomas R. Kreller, Esq.
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067

1 Proposed Counsel for the Official Committee of Tort Claimants

2 Baker & Hostetler LLP
3 Attn: Eric Sagerman, Esq. and Cecily Dumas, Esq.
4 11601 Wilshire Boulevard, Suite 1400
5 Los Angeles, CA 90025-0509

6 And

7 By Electronic Service via CM/ECF to all registered participants in this case as of April 4, 2019.

8 /s/ Karen L. Widder
9 Karen L. Widder
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